

United States District Court

for

THE DISTRICT OF GUAM

U.S.A. vs:

JOHN V. CRUZ

Docket No.

CR 05-00053-003

Petition for Action on Conditions of Pretrial Release

COMES NOW _____ CARMEN D. O'MALLAN _____ PRETRIAL SERVICES OFFICER
presenting an official report upon the conduct of defendant _____
who was placed under pretrial release supervision by the Honorable _____ Joaquin V.E. Manibusan, Jr., Magistrate Judge
sitting in the court at _____ Hagatna, Guam _____ on the _____ 24th _____ date of _____ June _____, 20 _____ 05
under the following conditions:

Please see attached Order Setting Conditions of Release filed on October 12, 2005.

RESPECTFULLY PRESENTING PETITION FOR ACTION OF COURT FOR CAUSE AS FOLLOWS:

(If short insert here; if lengthy write on separate sheet and attach)

Please see attached Declaration in Support of Petition.

FILED

DISTRICT COURT OF GUAM

AUG 30 2006

MARY L.M. MORAN
CLERK OF COURT

PRAYING THAT THE COURT WILL

Pursuant to 18 U.S.C. §3148, order that a summons be issued, and that this matter be set for a hearing, and at that hearing, the defendant be held to answer or show cause why bail should not be revoked or why conditions of release should not be modified, or for any other matter for which the Court may deem just and proper.

ORDER OF COURT

Considered and ordered this 30th day
of August, 20 06 and ordered filed
and made a part of the records in the above
case.

RECEIVED

AUG 28 2006

**DISTRICT COURT OF GUAM
HAGATNA, GUAM**

Respectfully

Carmen D. O'Mallan

U.S. Pretrial Services Officer

Place: Hagåtña, Guam

Date: August 28, 2006

**IN THE UNITED STATES DISTRICT COURT
FOR THE
TERRITORY OF GUAM**

UNITED STATES OF AMERICA,
Plaintiff,

vs.

JOHN V. CRUZ,
Defendant.

CRIMINAL CASE NO. 05-00053-003

DECLARATION IN SUPPORT OF PETITION

Re: Violation Report, Request for a Summons

I, U.S. Probation Officer Specialist Carmen D. O'Mallan, am the U.S. Probation Officer assigned to supervise the Court-ordered conditions of pretrial for John V. Cruz, and in that capacity declare as follows:

On June 24, 2005, the defendant made an initial appearance before Magistrate Judge Joaquin V. E. Manibusan, Jr. on a multi-count Indictment charging him with Conspiracy to Distribute Methamphetamine Hydrochloride, in violation of 21 U.S.C. § § 841(a)(1), (b)(1)(A)(viii), and 846; and Attempted Possession of Methamphetamine Hydrochloride with Intent to Distribute, in violation of 21 U.S.C. § § 841(a)(1), (b)(1)(A)(viii), and 846. He was charged along with co-conspirators Christopher M. Espinosa, Eric M. Aponik, and Jarett J. Elm. The defendant was released on June 24, 2005 on a personal recognizance with conditions.

On February 7, 2006, a violation report was filed alleging that Mr. Cruz had failed to show for urinalyses on three occasions, failed to file a monthly supervision report in January 2006 and failed to report to the probation officer as instructed on January 9, 2006. On February 15, 2006, a supplemental violation report was filed alleging that Mr. Cruz failed to report for urinalyses on February 7, 10, and 13, 2006 and failed to file a monthly supervision report in February 2006. On March 14, 2006, in a continued Order to Show Cause hearing, Mr. Cruz' release was continued with the amended condition that he not consume any type of fluid three hours prior to testing. This condition was included at the request of the Probation Office after Mr. Cruz submitted three negative dilute specimens indicating that he had been flushing prior to submitting to urinalyses. He is alleged to have violated the following conditions:

DECLARATION IN SUPPORT OF PETITION
Violation Report, Request for a Summons
Re: CRUZ, John V.
USDC Cr. Cs. No. 05-00053-003
August 28, 2006
Page 2

Special Condition: *The defendant shall not consume any type of fluid three hours prior to testing.*

On August 31, 2006, Mr. Cruz tested presumptive positive for methamphetamine. He denied any illicit drug usage and the specimen was sent to the laboratory for confirmation. On August 11, 2006, the laboratory test result was received by the Probation Office. The specimen drug status was negative and the specimen validity status was determined invalid as the creatinine and specific gravity levels were abnormal indicating the sample was diluted.

Special Condition: *The defendant shall report to the probation officer as directed.*

Mr. Cruz failed to file a monthly supervision report in July 2006.

Mr. Cruz has been returned to the start of the drug testing program as a result of his noncompliance with the program. This officer has not been able to determine if Mr Cruz is gainfully employed as he has not maintained contact with this officer as instructed.

Recommendation: The Probation Officer respectfully requests that pursuant to 18 U.S.C. §3148, this matter be scheduled for a hearing and a summons be issued for the defendant's appearance at that hearing to determine if his bail should be revoked or modified.

I declare, under penalty of perjury, that the foregoing is true and correct, except those matters stated upon information and belief, and as to those matters, I believe them to be true.

Executed this 28 day of August 2006, at Hagatna, Guam, in conformance with the provisions of 28 U.S.C. § 1746.


Respectfully submitted,

FRANK MICHAEL CRUZ
Chief U.S. Probation Officer

By:


CARMEN D. O'MALLAN
U.S. Probation Officer Specialist

Reviewed by:


ROSSANNA VILLAGOMEZ-AGUON
U.S. Probation Officer
Supervision Unit Leader

cc: Russell C. Stoddard, Assistant U.S. Attorney
Joaquin C. Arriola, Jr. Defense Attorney
File

RECEIVED
U.S. Probation Office

MAR 20 2006

Districts of Guam
and NMI

UNITED STATES DISTRICT COURT

FILED

DISTRICT COURT OF GUAM

MAR 20 2006

District of

GUAM
KRY L.M. MORAN
CLERK OF COURT

United States of America

V.

AMENDED
ORDER SETTING CONDITIONS
OF RELEASE

JOHN V. CRUZ

Case

CR-05-00053-003

Number:

Defendant

IT IS ORDERED that the release of the defendant is subject to the following conditions:

- (1) The defendant shall not commit any offense in violation of federal, state or local law while on release in this case.
- (2) The defendant shall immediately advise the court, defense counsel and the U.S. attorney in writing before any change in address and telephone number.
- (3) The defendant shall appear at all proceedings as required and shall surrender for service of any sentence imposed directed. The defendant shall appear at (if blank, to be

HAGATNA, GUAM

Place

U.S. COURTHOUSE

on

May 2, 2006 at 2:30 p.m.

Date and Time

Release on Personal Recognizance or Unsecured Bond

IT IS FURTHER ORDERED that the defendant be released provided that:

- (☒) (4) The defendant promises to appear at all proceedings as required and to surrender for service of any sentence imposed.
- () (5) The defendant executes an unsecured bond binding the defendant to pay the United States the sum of _____ dollars (\$ _____)
in the event of a failure to appear as required or to surrender as directed for service of any sentence imposed.

COPY

Additional Conditions of Release

Upon finding that release by one of the above methods will not by itself reasonably assure the appearance of the defendant and the safety of other persons and the community.

IT IS FURTHER ORDERED that the release of the defendant is subject to the conditions marked below:

() (6) The defendant is placed in the custody of:

(Name of person or organization) _____

(Address) _____

(City and state) _____ (Tel. No.) _____

who agrees (a) to supervise the defendant in accordance with all the conditions of release, (b) to use every effort to assure the appearance of the defendant at all scheduled court proceedings, and (c) to notify the court immediately in the event the defendant violates any conditions of release or disappears.

Signed: _____

Custodian or Proxy

Date

(X) (7) The defendant shall:

(X) (a) report to the **U.S. PROBATION OFFICE**, _____,

telephone number **(671) 4739201**, not later than **AS DIRECTED**.

() (b) execute a bond or an agreement to forfeit upon failing to appear as required the following sum of money or designated property: _____

() (c) post with the court the following indicia of ownership of the above-described property, or the following amount or percentage of the above-described _____

() (d) execute a bail bond with solvent sureties in the amount of \$ _____.

(X) (e) maintain or actively seek employment;

() (f) maintain or commence an education program.

(X) (g) surrender any passport to: **Clerk of Court, 4th Floor, U.S. District Court of Guam**

(X) (h) obtain no passport.

() (i) abide by the following restrictions on personal association, place of abode, or travel: _____

(X) (j) avoid all contact, directly or indirectly, with any persons who are or who may become a victim or potential witness in the subject investigation or prosecution, including but not limited to: _____

() (k) undergo medical or psychiatric treatment and/or remain in an institution as follows: _____

() (l) return to custody each (week) day as of _____ o'clock after being released each (week) day as of _____ o'clock for employment, schooling, or the following limited purpose(s): _____

() (m) maintain residence at a halfway house or community corrections center, as deemed necessary by the pretrial services office or supervising officer.

(X) (n) refrain from possessing a firearm, destructive device, or other dangerous weapons.

(X) (o) refrain from (X) any () excessive use of alcohol.

(X) (p) refrain from use or unlawful possession of a narcotic drug or other controlled substances defined in 21 U.S.C. § 802, unless prescribed by a licensed medical practitioner.

(X) (q) submit to any method of testing required by the pretrial services office or the supervising officer for determining whether the defendant is using a prohibited substance. Such methods may be used with random frequency and include urine testing, the wearing of a sweat patch, a remote alcohol testing system, and/or any form of prohibited substance screening or testing.

() (r) participate in a program of inpatient or outpatient substance abuse therapy and counseling if deemed advisable by the pretrial services office or supervising officer.

() (s) refrain from obstructing or attempting to obstruct or tamper, in any fashion, with the efficiency and accuracy of any prohibited substance testing or electronic monitoring which is (are) required as a condition(s) of release.

() (t) participate in one of the following home confinement program components and abide by all the requirements of the program which () will or () will not include electronic monitoring or other location verification system. You shall pay all or part of the cost of the program based upon your ability to pay as determined by the pretrial services office or supervising officer.

() (i) **Curfew.** You are restricted to your residence every day () from _____ to _____, or () as directed by the pretrial services office or supervising officer; or

() (ii) **Home Detention.** You are restricted to your residence at all times except for employment; education; religious services; medical, substance abuse, or mental health treatment; attorney visits; court appearances; court-ordered obligations; or other activities as pre-approved by the pretrial services office or supervising officer; or

() (iii) **Home Incarceration.** You are restricted to your residence at all times except for medical needs or treatment, religious services, and court appearances pre-approved by the pretrial services office or supervising officer.

(X) (u) report as soon as possible, to the pretrial services office or supervising officer any contact with any law enforcement personnel, including, but not limited to, any arrest, questioning, or traffic stop.

(X) (v) **STAY AWAY FROM ALL PORTS OF ENTRY OR EXIT**

(X) (w) **DEFENDANT SHALL NOT CONSUME ANY TYPE OF FLUID THREE (3) PRIOR TO TESTING.**

() (x) _____

Advice of Penalties and Sanctions

TO THE DEFENDANT:

YOU ARE ADVISED OF THE FOLLOWING PENALTIES AND SANCTIONS:

A violation of any of the foregoing conditions of release may result in the immediate issuance of a warrant for your arrest, a revocation of release, an order of detention, and a prosecution for contempt of court and could result in a term of imprisonment, a fine, or both.

The commission of a Federal offense while on pretrial release will result in an additional sentence of a term of imprisonment of not more than ten years, if the offense is a felony; or a term of imprisonment of not more than one year, if the offense is a misdemeanor. This sentence shall be in addition to any other sentence.

Federal law makes it a crime punishable by up to 10 years of imprisonment, and a \$250,000 fine or both to obstruct a criminal investigation. It is a crime punishable by up to ten years of imprisonment, and a \$250,000 fine or both to tamper with a witness, victim or informant; to retaliate or attempt to retaliate against a witness, victim or informant; or to intimidate or attempt to intimidate a witness, victim, juror, informant, or officer of the court. The penalties for tampering, retaliation, or intimidation are significantly more serious if they involve a killing or attempted killing.

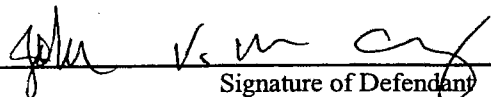
If after release, you knowingly fail to appear as required by the conditions of release, or to surrender for the service of sentence, you may be prosecuted for failing to appear or surrender and additional punishment may be imposed. If you are convicted of:

- (1) an offense punishable by death, life imprisonment, or imprisonment for a term of fifteen years or more, you shall be fined not more than \$250,000 or imprisoned for not more than 10 years, or both;
- (2) an offense punishable by imprisonment for a term of five years or more, but less than fifteen years, you shall be fined not more than \$250,000 or imprisoned for not more than five years, or both;
- (3) any other felony, you shall be fined not more than \$250,000 or imprisoned not more than two years, or both;
- (4) a misdemeanor, you shall be fined not more than \$100,000 or imprisoned not more than one year, or both.

A term of imprisonment imposed for failure to appear or surrender shall be in addition to the sentence for any other offense. In addition, a failure to appear or surrender may result in the forfeiture of any bond posted.

Acknowledgment of Defendant

I acknowledge that I am the defendant in this case and that I am aware of the conditions of release. I promise to obey all conditions of release, to appear as directed, and to surrender for service of any sentence imposed. I am aware of the penalties and sanctions set forth above.


Signature of Defendant

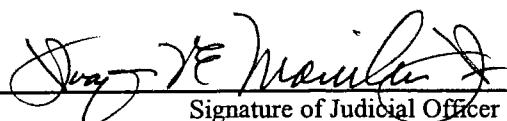
Address

Merizo, Guam
City and State Telephone

Directions to United States Marshal

- (X) The defendant is ORDERED released after processing.
- () The United States marshal is ORDERED to keep the defendant in custody until notified by the clerk or judge that the defendant has posted bond and/or complied with all other conditions for release. The defendant shall be produced before the appropriate judge at the time and place specified, if still in custody.

Date: March 20, 2006


Signature of Judicial Officer

JOAQUIN V. E. MANIBUSAN, JR., U.S. Magistrate Judge
Name and Title of Judicial Officer

DISTRIBUTION: COURT DEFENDANT PRETRIAL SERVICE U.S. ATTORNEY U.S. MARSHAL